



## Citizenship and Immigration Canada

**Regulatory Improvements  
to the Temporary Foreign  
Worker Program**





## Background

The majority of employers treat their employees properly but in some cases TFWs are mistreated and exploited. These cases injure the reputation of all employers who have employed TFWs and the program itself.

**The new regulations have been implemented to meet the following objectives:**

- Minimize the potential for TFW exploitation by employers and third-party agents, thereby protecting TFWs who work in Canada.
- Implement stricter employer monitoring mechanisms.





## Introduction

Regulatory changes to the Temporary Foreign Worker Program (TFWP) come into force **April 1<sup>st</sup>, 2011**.

### Relevant changes include:

- Employers wishing to hire a temporary foreign worker to work in Canada must demonstrate the **genuineness** of the job offer;
- Employers who fail to provide the same **wages, working conditions** and **occupation** that were substantially the same (**STS**) as those items set out in the employer offer of employment in the past two years will be deemed ineligible from participating in the TFWP;
- **Cumulative duration** limits the length of time a TFW may work in Canada before returning home.





## Roles of HRSDC/SC, CIC, and CBSA

Regulations	HRSDC/SC LMO required, includes LCP	CIC LMO exempt	CBSA LMO exempt/Visa exempt
Genuineness of the employment offer	x	x	x
Consistency with terms of any Federal- Provincial/Territorial agreements	x	x	x
Substantially the Same	x	x	x
Cumulative Duration		x	x





## Genuineness

### Four Factors on which genuineness of the job offer will be assessed:

- Job offer was made by an employer who is actively engaged in the business;
- Job offer is consistent with the reasonable employment needs of the employer;
- The employer is reasonably able to fulfill the terms of the job offer;
- Employer must show past compliance with federal/provincial/territorial laws that regulate employment in the province/territory where the foreign national will be working.





## Substantially the Same (STS)

- An assessment of whether or not, within the **past two years**, employers **who have hired TFWs** provided the same **wages, working conditions** and **occupation** that were substantially the same (**STS**) as those items set out in the employer's offer of employment to the foreign national.
- **A negative assessment by CIC shall result in:**
  - A refusal to issue a work permit to any foreign national offered employment by the employer;
  - The employer being ineligible to access the TFW Program for **2 years**; and
  - The employer's name being displayed on a **CIC public website**.
- A foreign national cannot enter into any **new** contract with a suspended employer.





## Substantially the Same (STS)

- Employers will be given an opportunity to **justify** any failure to provide substantially the same wages, working conditions and employment. Reasonable justification includes:
  - A change in federal/provincial/territorial law or change to a collective agreement;
  - Changes employer had to make in the workplace in response to a dramatic change in economic conditions that were not directed disproportionately at foreign workers;
  - Good faith employer error in interpreting obligations regarding wages, working conditions or occupation, and employer has provided or made sufficient efforts to provide compensation to any foreign nationals that have suffered a disadvantage;
  - Administrative accounting error by employer, and employer has provided or made sufficient efforts to provide compensation to any foreign nationals that have suffered a disadvantage.





## Consistency with Federal-Provincial-Territorial Immigration Agreements

- There may be terms in the various bilateral federal-provincial-territorial immigration agreements that expand upon or restrict the entry of certain TFWs;
- Provinces/Territories have the authority to have work permits for named TFWs exempt from the requirement for an LMO;
  - In exercising these authorities, provinces are expected to exercise due diligence in ensuring that the employer is genuine and in compliance with applicable legislation
- Provinces/Territories can also request the Minister of CIC to exempt specific occupations or other defined groups from the need for an LMO for limited periods of time, or in some cases preclude the need for a named employer;
- In addition, pilot projects conducted under these TFW Annexes can impose additional requirements, such as minimum language competency.





## Cumulative Duration - Limit on Time Worked in Canada

- Establishes a maximum cumulative duration period of **four years** that a TFW can work in Canada.
- The counting of the cumulative time worked in Canada starts **April 1, 2011**.
- TFWs are required to track their time worked in Canada.
- Employers must ensure workers selected for employment are not approaching their 4 year maximum time allowed to work in Canada.
- Exemptions to be finalized.





*Thank you*



*Questions*

